

S. AMANDA MARSHALL, OSB # 95347

United States Attorney

District of Oregon

LESLIE J. WESTPHAL, OSB #83344

leslie.westphal@usdoj.gov

Assistant United States Attorney

United States Attorney's Office

District of Oregon

1000 SW Third Avenue, Suite 600

Portland, Oregon 97204-2902

Telephone: (503) 727-1027

Facsimile: (503) 727-1117

RECEIVED
AUG 27 2012

DEPARTMENT OF JUSTICE
TRIAL DIVISION

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

**PETITION TO ENFORCE DEA
ADMINISTRATIVE SUBPOENA**

**STATE OF OREGON PRESCRIPTION
DRUG MONITORING PROGRAM,**

Respondent.

12-MC-298

Petitioner, by S. Amanda Marshall, United States Attorney for the District of Oregon, and through Leslie J. Westphal, Assistant United States Attorney for the District of Oregon, petitions this Court to enforce an administrative subpoena.

Pursuant to Local Rule 7-1, the parties have made good faith efforts to resolve the dispute but have been unable to do so.

Petition to Enforce DEA Administrative Subpoena

Page 1

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DEPARTMENT OF JUSTICE
TRIAL DIVISION

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

**MEMORANDUM IN SUPPORT OF
PETITION TO ENFORCE DEA
ADMINISTRATIVE SUBPOENA**

**STATE OF OREGON PRESCRIPTION
DRUG MONITORING PROGRAM,**

Respondent.

Petitioner, by S. Amanda Marshall, United States Attorney for the District of Oregon, and through Leslie J. Westphal, Assistant United States Attorney for the District of Oregon, submits this memorandum in support of a petition to enforce an administrative subpoena, pursuant to 21

S. AMANDA MARSHALL, OSB # 95347

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DEPARTMENT OF JUSTICE
TRIAL DIVISION

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No.: *12-MP-298*

Petitioner,

v.

**STATE OF OREGON PRESCRIPTION
DRUG MONITORING PROGRAM,**

**DECLARATION OF TYLER D.
WARNER IN SUPPORT OF PETITION
TO ENFORCE DEA ADMINISTRATIVE
SUBPOENA**

Respondent.

Pursuant to 28 U.S.C. § 1746, Tyler D. Warner declares under penalty of perjury that the information stated hereafter is true and correct:

1. I, Tyler D. Warner, am a Diversion Investigator of the United States Drug Enforcement Administration. Pursuant to 21 U.S.C. § 878(a)(2), I have authority to execute and serve administrative inspection warrants, subpoenas and summonses issued under the authority of the United States.

Declaration of Tyler D. Warner

Page 1

S. AMANDA MARSHALL, OSB # 95347
United States Attorney
District of Oregon
LESLIE J. WESTPHAL, OSB #83344
leslie.westphal@usdoj.gov
Assistant United States Attorney
United States Attorney's Office
District of Oregon
1000 SW Third Avenue, Suite 600
Portland, Oregon 97204-2902
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DEPARTMENT OF JUSTICE
TRIAL DIVISION

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Case No.: 12-MC-298

Petitioner,

v.

**STATE OF OREGON PRESCRIPTION
DRUG MONITORING PROGRAM,**

**DECLARATION OF LORI A. CASSITY
IN SUPPORT OF PETITION TO
ENFORCE DEA ADMINISTRATIVE
SUBPOENA**

Respondent.

Pursuant to 28 U.S.C. § 1746, Lori A. Cassity declares under penalty of perjury that the information stated hereafter is true and correct:

1. I, Lori A. Cassity, am a Supervisory Special Agent of the United States Drug Enforcement Administration (DEA). I have been a Special Agent with the DEA for 29 years, of which approximately 13 of those years I have supervised criminal investigations targeting violations of the Controlled Substance Act. Pursuant to 21 U.S.C. § 878(a)(2), I have authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas

Declaration of Lori A. Cassity

Page 1

From: [BERAN Todd](#)
To: ["tyler.d.warner@usdoj.gov"](mailto:tyler.d.warner@usdoj.gov)
Subject: #secure# Report in response to Subpoena No. RF-12-237101
Date: Thursday, September 06, 2012 2:01:34 PM
Attachments: [245280.pdf](#)

Investigator Warner:

Attached is the report requested in Subpoena No. RF-12-237101 pursuant to the Order to Enforce DEA Administrative Subpoena for Case No. '12-MC-298 for the United States District Court, District of Oregon, Portland Division.

Todd Beran
Program Coordinator
Prescription Drug Monitoring Program
800 NE Oregon Street, Suite 730
Portland, OR 97232
971-673-1105
todd.beran@state.or.us

From: [Warner, Tyler D.](#)
To: [BERAN Todd](#)
Cc: [Brennan, Claire M.](#)
Subject: RE: Report in response to Subpoena No. RF-12-237101
Date: Monday, September 10, 2012 12:11:24 PM

Hi Todd,

Thank you for your email and phone message. My apologies for not getting back to you sooner as I was out of the office all of last week.

I received the report through the link in the email and everything looks fine.

Thank you and regards,

Tyler Warner
Diversion Investigator
Drug Enforcement Administration

09/11/2012 14:04 4066511600

BILLINGS RO

PAGE 02/05

**U.S. DEPARTMENT OF JUSTICE/DRUG ENFORCEMENT ADMINISTRATION
SUBPOENA**

In the matter of the investigation of
Case No: RM-12-2045
Subpoena No. RM-12-980963

TO: Oregon PDMP-IPE
AT: PO Box 14450 Portland , OR 97293-0450

PHONE: 9716730741
FAX: 9716730990

GREETING: By the service of this subpoena upon you by Matthew Chaney who is authorized to serve it, you are hereby commanded and required to appear before Matthew Chaney, an officer of the Drug Enforcement Administration to give testimony and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

This is an administrative subpoena issued by the Drug Enforcement Administration (DEA), a federal law enforcement agency, for records that may include protected health information for [REDACTED]

[REDACTED] DEA is authorized by 21 U.S.C. § 876 to issue an administrative subpoena and is permitted by 45 C.F.R. § 164.512(f) to request protected health information. The information sought is relevant and material to a legitimate law enforcement inquiry; the subpoena is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and de-identified information cannot reasonably be used.

NONDISCLOSURE: Disclosure of any information concerning this subpoena would impede a federal law enforcement investigation. Pursuant to 45 C.F.R. § 164.528(a)(2), you must suspend notice to any individual whose protected health information is disclosed in response to this subpoena for 1 year.

Please do not disclose the existence of this request or investigation for an indefinite time period. Any such disclosure could impede the criminal investigation being conducted and interfere with the enforcement of the Controlled Substances Act.

Please direct questions concerning this subpoena and/or responses to TFO Matthew J. Chaney, 406-655-2918.

Place and time for appearance: At 2970 King Ave West on the 22nd day of September, 2012 at 09:00 AM. In lieu of personal appearance, please email records to Matthew.J.Chaney@usdoj.gov or fax to 406-651-1600.

Failure to comply with this subpoena will render you liable to proceedings in the district court of the United States to enforce obedience to the requirements of this subpoena, and to punish default or disobedience.

Issued under authority of Sec. 506 of the Comprehensive Drug
Abuse Prevention and Control Act of 1970, Public Law No. 91-513
(21 U.S.C. 876)

ORIGINAL

Signature: _____

Joseph C. Kirkland
Group Supervisor

Issued this 11th day of Sep 2012

FORM DEA-79

09/17/2012 12:24 5032278641

PORTLAND TDS

PAGE 02/07

U.S. DEPARTMENT OF JUSTICE/DRUG ENFORCEMENT ADMINISTRATION
SUBPOENA

In the matter of the investigation of
Case No: GFRF-12-9351
Subpoena No. RF-12-995519

TO: Oregon Prescription Drug Monitoring Program
AT: PO Box 14450 Portland, OR 97293-0450

PHONE:
FAX: 9716730990

GREETING: By the service of this subpoena upon you by Special Agent Phil Brown who is authorized to serve it, you are hereby commanded and required to appear before Special Agent Phil Brown, an officer of the Drug Enforcement Administration to give testimony and to bring with you and produce for examination the following books, records, and papers at the time and place hereinafter set forth:

Pursuant to an investigation of violations of 21 U.S.C. Section 801 et seq., please provide the following information. We request that you provide a physician summary of all controlled substances prescriptions prescribed by:

[REDACTED]

The time frame of this request is 18 September, 2011 through the date of this subpoena. This summary should include the pharmacy's store number and address, prescription number, drug(s), quantity, and date dispensed, patient's name and address and the method of payment.

Please do not disclose the existence of this request or investigation for an indefinite time period. Any such disclosure could impede the criminal investigation being conducted and interfere with the enforcement of the Controlled Substances Act.

Please direct questions concerning this subpoena and/or responses to SA Philip Brown, 503-721-6586.

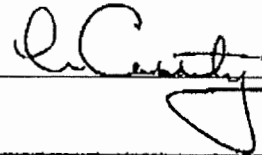
Place and time for appearance: At 503-721-6606 (Fax) on the 28th day of September, 2012 at 09:00 AM. In lieu of personal appearance, please email records to philip.v.brown@usdoj.gov or fax to 503-721-6606.

Failure to comply with this subpoena will render you liable to proceedings in the district court of the United States to enforce obedience to the requirements of this subpoena, and to punish default or disobedience.

Issued under authority of Sec. 506 of the Comprehensive Drug
Abuse Prevention and Control Act of 1970, Public Law No. 91-513
(21 U.S.C. 876)

ORIGINAL

Signature: _____



Lori A Cassidy
GS

Issued this 17th day of Sep 2012

FORM DEA-79

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
TRIAL DIVISION

September 21, 2012

Ms. Leslie Westphal
Assistant US Attorney
1000 SW 3rd Ave, Suit 600
Portland, Oregon 97204-2902

Mr. Matthew J. Chaney
Task Force Officer
2970 King Ave. West
Billings, Montana 59102

RE: In the matter of the investigation of Case No. RM-12-2045
Administrative Subpoena No. RF-12-980963

Dear Ms. Westphal and Mr. Chaney,

The Oregon Prescription Drug Monitoring Program received an administrative subpoena directing it to provide protected health information for a specific individual. The subpoena is returnable on September 22, 2012. Oregon law forbids the agency from disclosing the requested information unless pursuant to "a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency engaged in an authorized drug-related investigation involving a person to whom the requested information pertains." ORS 431.966. I recognize that administrative subpoenas do not require probable cause. However, the administrative subpoena does not constitute a valid court order, and an administrative subpoena is not self-enforcing.

We understand that you may seek a court order compelling the agency's records custodian to produce the prescription drug information. I will accept service of any documents filed with the court and respond accordingly.

Please contact me if you have questions. Thank you.

Sincerely yours,

Thomas Castle
Assistant Attorney General

Mr. Steve Briggs
September 21, 2012
Page 2

Document2/TJC/tjc

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
TRIAL DIVISION

September 21, 2012

Ms. Leslie Westphal
Assistant US Attorney
1000 SW 3rd Ave, Suit 600
Portland, Oregon 97204-2902

Mr. Phil Brown
Special Agent
100 SW Main St.
Suite 500
Portland, Oregon 97204

RE: In the matter of the investigation of Case No. GFRF-12-9351
Administrative Subpoena No. RF-12-995519

Dear Ms. Westphal and Mr. Brown,

The Oregon Prescription Drug Monitoring Program received an administrative subpoena directing it to provide a physician summary for prescriptions written by two Oregon practitioners. The subpoena is returnable on September 28, 2012. Oregon law forbids the agency from disclosing the requested information unless pursuant to "a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency engaged in an authorized drug-related investigation involving a person to whom the requested information pertains." ORS 431.966. I recognize that administrative subpoenas do not require probable cause. However, the administrative subpoena does not constitute a valid court order, and an administrative subpoena is not self-enforcing.

We understand that you may seek a court order compelling the agency's records custodian to produce the prescription drug information. I will accept service of any documents filed with the court and respond accordingly.

Please contact me if you have questions. Thank you.

Sincerely yours,

/s/
Thomas Castle
Assistant Attorney General

Exhibit F, Page 1 of 2
Declaration of Nina Englander
PDMP v. U.S. DEA

USDC Case No. 3:12-cv-02023-HA

Mr. Steve Briggs
September 21, 2012
Page 2

Document2/TJC/tjc